



Entered on Docket  
October 12, 2006

A handwritten signature in black ink, appearing to read "R. B. Riegle".

Hon. Linda B. Riegle  
United States Bankruptcy Judge

Amber W. Jarvis, Utah Bar No. 1649  
RAY QUINNEY & NEBEKER, P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500  
Facsimile: (801) 532-7543  
Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)

and

Leonard E. Schwartzet  
Nevada Bar No. 0399  
Jeanette E. McPherson  
Nevada Bar No. 5423  
Schwartzet & McPherson Law Firm  
2890 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5308  
Telephone: (702) 228-7590  
Facsimile: (702) 892-0122  
E-Mail: [bkfiling@e-mailaw.com](mailto:bkfiling@e-mailaw.com)

Attorneys for Debtors and Debtors-in-Possession.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

**USA COMMERCIAL MORTGAGE COMPANY,**  
**Debtor.**

Case Nos. BK-S-06-10725 LBR  
Case Nos. BK-S-06-10726 LBR  
Case Nos. BK-S-06-10727 LBR  
Case Nos. BK-S-06-10728 LBR  
Case Nos. BK-S-06-10729 LBR

In re:

**USA CAPITAL REALTY ADVISORS, LLC,**  
**Debtor.**

Chapter 11

In re:

**USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC.**  
**Debtor.**

Jointly Administered Under  
Case No. BK-S-06-10725 LBR

In re:

**USA CAPITAL FIRST TRUST DEED FUND, LLC,**  
**Debtor.**

**STIPULATION AND ORDER FOR  
FIRST TRUST DEED FUND  
EQUITY SECURITY HOLDERS**

In re:  
**USA SECURITIES, LLC.**

**Debtor.**

**COMMITTEE TO REPRESENT  
FIRST TRUST DEED FUND IN  
INTERPLEADER ACTION**

**[AFFECTS USA CAPITAL FIRST  
TRUST DEED FUND]**

Date: N/A

Time: N/A

- All Debtors
  - USA Commercial Mortgage Company
  - USA Capital Realty Advisors, LLC
  - USA Capital Diversified Trust Deed Fund, LLC
  - USA Capital First Trust Deed Fund, LLC
  - USA Securities, LLC

USA Capital First Trust Deed Fund, LLC ("FIRST TRUST DEED FUND") and The Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the "FTDF COMMITTEE") represent and stipulate as follows:

## I. Background

11        1. USA Commercial Mortgage Company ("USACMC") and FIRST TRUST DEED  
12 FUND filed petitions for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006. The  
13 cases are jointly administered, and both of these debtors and their affiliates are jointly represented  
14 by Ray Quinney & Nebeker P.C. and the Schwartzer & McPherson Law Firm.

15        2.        USACMC has brought an interpleader action in this bankruptcy case, Adversary  
16 No. 06-1167 LBR (the "Interpleader Action") in which USACMC is the plaintiff and the estate of  
17 FIRST TRUST DEED FUND and others are the defendants. The Interpleader Action has been  
18 brought to determine the ownership of the funds in USACMC's Investor Trust Account, which  
19 contains approximately \$1.7 million and against which there are approximately \$3.4 million in  
20 claims by persons who either sold or purchased fractional interests in direct loan investments.  
21 USACMC makes no claim against these funds. The estate of FIRST TRUST DEED FUND has a  
22 claim for approximately \$100,000 against these funds. Bankruptcy counsel for USACMC and  
23 FIRST TRUST DEED FUND believes that it would appear to be inappropriate for counsel, who  
24 represent both the estate of USACMC and the estate of FIRST TRUST DEED FUND in these  
25 bankruptcy proceedings, to represent either the estate of USACMC or the estate of FIRST TRUST  
26 DEED FUND in the Interpleader Action. USACMC, with Court approval, has employed David  
27 W. Huston, Esq. as its Special Conflicts Counsel for the Interpleader Action.

## **II. Scope of Representation**

2       3. Through this stipulation, and subject to Court approval, FIRST TRUST DEED  
3 FUND authorizes the FTDF COMMITTEE to represent the estate of FIRST TRUST DEED  
4 FUND in the Interpleader Action discussed above. There does not appear to be any conflict in  
5 these matters which would prevent FTDF COMMITTEE from representing the estate of FIRST  
6 TRUST DEED FUND in the Interpleader Action.

7       4.     Stutman Treister & Glatt, Professional Corporation ("STUTMAN") is court  
8 approved counsel for FTDF COMMITTEE in the bankruptcy case. STUTMAN will represent  
9 FTDF COMMITTEE as the representative of the estate of FIRST TRUST DEED FUND in the  
10 Interpleader Action, and will continue to represent the FTDF COMMITTEE in all other matters in  
11 the bankruptcy case.

### **III. Compensation**

13       5. FIRST TRUST DEED FUND proposes that STUTMAN will charge the FTDF  
14 COMMITTEE for its services in connection with the Interpleader Action in accordance with its  
15 currently authorized employment.

#### **IV. Stipulated Representation Permitted**

17       6.      Stipulated representation of a debtor's estate by an official committee is  
18      permissible under *Liberty Mutual Insurance Company v. Official Unsecured Creditors Committee*  
19      of *Spaulding Composites Co.* (*In re Spaulding Composites Co.*), 207 B.R. 899, 904 (9<sup>th</sup> Cir. BAP  
20      1997), which stated:

This case is somewhat unusual in that the setting for derivative litigation often involves a debtor-in-possession ("DIP") who is hostile to proposed litigation. See e.g., *Curry*, 57 B.R. at 828; *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d at 247; *In re STN Enterprises*, 779 F.2d at 901. In that setting, the concern is that the DIP is failing to attend to litigation which it should pursue. Here, however, rather than opposing the Committee's suit, Spaulding approved of it, and Liberty argues the converse to the above — that is, Liberty argues that the Committee is fostering estate litigation which should not be pursued. The question,

then, is whether a DIP may stipulate to representation by an unsecured creditors' committee. We hold that it may.

See also, *In re Commodore Intern. Ltd.*, 262 F.3d 96, 99-100 (2<sup>nd</sup> Cir. 2001); *In re Walnut Leasing Co.*, 1999 WL 729267 (E.D.Pa. 1999). FIRST TRUST DEED FUND also relies on Bankruptcy Code § 1103(c)(5), which states: "A committee appointed under section 1102 of this title may perform such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). See, *Official Committee of Unsecured Creditors of Cybergeneics Corp. ex rel. Cybergeneics Corp v. Chinery*, 330 F.3d 548, 562 (3<sup>rd</sup> Cir. 2003); *contra, In re Fox*, 305 B.R. 912 (10th Cir. BAP 2004). The potential recovery of approximately \$100,000 in the Interpleader Action will benefit the estate of FIRST TRUST DEED FUND and the equity security holders represented by the FTDF COMMITTEE.

#### **STIPULATION**

FIRST TRUST DEED FUND stipulates that its estate be represented by FTDF COMMITTEE in the Interpleader Action.

RAY QUINNEY NEHEKER, P.C.  
and  
SCHWARTZER & MCPHERSON LAW FIRM

Leonard E. Schwartzer, Esq.  
2850 South Jones Blvd., Suite 1  
Las Vegas NV 89146  
Counsel for USA Capital First Trust Deed Fund, LLC

STUTMAN, TREISTER & GLATT, P.C.

Frank A. Morris, Esq.  
Eve H. Kurasik, Esq.  
Andrew M. Parlen, Esq.  
1901 Avenue of the Stars, 12th Floor  
Los Angeles, CA 90067  
Counsel for the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC

1 OFFICE OF UNITED STATES TRUSTEE  
2 *Brian AUST*  
3 August B. Landis, Esq.  
4 Assistant United States Trustee

5 **ORDER**

6 IT IS SO ORDERED.

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SCHWARTZER & MCPHERSON LAW FIRM  
2650 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5138  
Tel: (702) 226-7590 Fax: (702) 692-0122